

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Victor B. Perkins,

Civil No. 13-1133 (PAM/FLN)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Dr. S. Stanton and Dr. Diane Hart,

Defendants.

Victor B. Perkins, *Pro Se.*
David Fuller, Assistant United States Attorney, for Defendant.

THIS MATTER came before the undersigned United States Magistrate Judge on Plaintiff's motion for Summary Judgment as a Result of Default (ECF No. 7). This matter was referred to the undersigned for Report and Recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons set forth below, the Court recommends that Plaintiff's motion be **DENIED**.

Perkins seeks an entry of default judgment against the Defendants on the basis that they have failed to respond within 60 days of being served. ECF No. 7 at 1. Rule 55(d) states that "default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies this court." Fed. R. Civ. Pro. 55(d). Perkins argument that the Government responded untimely is incorrect. Perkins served Defendant Hart on July 2, 2013 and Defendant Stanton on July 10, 2013. ECF No. 6. Measuring from the date of the person last served, Defendants' response was due on September 9, 2013.¹ Moreover, the

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Defendants filed a motion to dismiss, or in the alternative, for summary judgment on September 9, 2013. ECF No. 9. The Government's memorandum in support of

record supports the Government's contention that proper service has not been completed in this case. Pursuant to Rule 4(i)(3), in order to effectuate service on an employee of the federal government, one must serve the United States in addition to the individual(s) being sued. Fed. R. Civ. P. 4(i)(3); *see also* Fed. R. Civ. P. 4(i)(1)(A)-(C). There is no indication on the docket that Perkins has properly served the United States.

V. RECOMMENDATION

Based upon the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED** that Perkins' motion for Summary Judgment as a Result of Default (ECF No. 7) be **DENIED**.

DATED: February 13, 2014

s/Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **February 27, 2014**, written objections that specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within fourteen (14) days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.

their motion addresses Perkins's argument for default judgment. ECF No. 10.